City of Lafayette Staff Report

For:	City Council
By:	Malathy Subramanian, City Attorney
Date Written:	December 23, 2008
Meeting Date:	January 12, 2009
Subject:	Ordinance 579 Repealing Chapter 56-4 of the Contra Costa County Code Entitled "Solicitors and Peddlers" and adding Chapter 4-4 of the Lafayette Municipal Code Entitled "Peddlers, Solicitors and Canvassers"

Background

The City Council previously considered Ordinance 579 "Peddlers, Solicitors and Canvassers" at its August 11, 2008, November 10, 2008 and November 24, 2008 meetings. Most recently at the November 24, 2008 meeting, the Council requested certain minor revisions to the Ordinance.

Since that time, Vice Mayor Andersson met with the Crime Prevention Commission to discuss concerns related to the Ordinance. As a result, the Commission voted unanimously to recommend to the Council that it add the following language in Sections 4-405(a) and (b)(8), 4-406(a)(5), and 4-408(b)(2): "conviction of any felony or any misdemeanor involving theft, violence, drugs or acts of a trespassing nature."

Analysis

We have revised the Ordinance to reflect the Council's requested revisions and to also include the language recommended by the Commission. These revisions appear as "redlines" for your review and consideration.

Recommendation

Discuss and introduce Ordinance 579

Attachment

Ordinance 579 Repealing Chapter 56-4 of the Contra Costa County Code Entitled "Solicitors and Peddlers" and adding Chapter 4-4 of the Lafayette Municipal Code Entitled "Peddlers, Solicitors and Canvassers"

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of Lafayette Repealing Chapter 56-4 of the Contra Costa County Code Entitled "Solicitors and Peddlers" and Adding Chapter 4-4 of the Lafayette Municipal Code Entitled "Solicitors, Peddlers and Canvassers"	)))))	Ordinance No. 579

WHEREAS, on February 24, 1975, the City Council of the City of Lafayette adopted Ordinance 131, adopting by reference Chapter 56-4, Article 56-4.202 through 56-4.1206, inclusive, of Title 5 of the Contra Costa County Code, titled "Solicitors and Peddlers;"

WHEREAS, those previously adopted provisions need to be updated in order to more clearly set out the requirements and regulations applicable to such persons within the City of Lafayette; be consistent with current First Amendment jurisprudence and to better protect residents from fraud and crime and to preserve residents' privacy in their homes;

WHEREAS, the City has seen increased incidents of vandalism and property damage committed by individuals aged 16 and older, which can include the use of motor vehicles; and

WHEREAS, to better protect residents from crime that might occur on their property, the permit requirements of this chapter shall only apply to persons over the age of 15 who are engaging in door-to-door peddling and soliciting; and

WHEREAS, the City of Lafayette desires to adopt its own regulations of door-to-door peddling and soliciting.

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. Amendments. Chapter 56-4, Article 56-4.202 through 56-4.1206, entitled "Solicitors and Peddlers" is hereby repealed in its entirety and Chapter 4-4 of Title 4 of the Lafayette Municipal Code entitled "Peddlers, Solicitors and Canvassers" is hereby added to read as follows:

Chapter 4-4

PEDDLERS, SOLICITORS AND CANVASSERS

Section 4-401 Findings and Purpose.

(a) This Ordinance is based on the following findings:

(1) Unregulated door-to-door peddling and soliciting constitutes a serious concern for the City of Lafayette.

(2) The goal of protecting residents from fraud and crime and thereby promoting the safety and privacy of residences within the City is a legitimate, urgent, and substantial governmental objective.

(3) The City has a legitimate interest in preventing fraudulent or criminal activities which may result from unregulated peddling and soliciting.

(4) The City has a legitimate interest in protecting its residents' privacy by preventing unwanted peddling, soliciting and canvassing which is forced upon them.

(5) The City has a legitimate interest in protecting its residents' safety and privacy by reasonably limiting the hours

of soliciting, peddling and canvassing and requiring permits in a content neutral manner.

(6) All of these goals may properly be served by this narrowly tailored regulation which requires peddlers and solicitors to obtain a permit prior to engaging in any peddling or soliciting within the City, reasonably limits the hours of activities, and prohibits peddling, soliciting and canvassing of occupants on property where residents have posted a sign prohibiting such activities which complies with this chapter.

(b) The purpose of this chapter is to balance First Amendment rights and the health, safety and welfare of the City of Lafayette and its residents.

Section 4-402 Definitions.

For purposes of this chapter, the following definitions shall apply.

(a) "Peddling" includes the act of any person, whether a resident of the city or not, traveling by foot, vehicle, or any other type of conveyance, from door to door, place to place, house to house, or street to street, carrying, conveying, or transporting goods, wares, merchandise, other personal property of any nature or services in which the person deals. A person who engages in the act of peddling shall be referred to as a "peddler."

(b) "Soliciting" includes the act of any person, whether a resident of the city or not, traveling by foot, vehicle, or any other type of conveyance, from door to door, place to place, house to house, or street to street, requesting directly or indirectly, money, credit, personal property, or other thing of value or taking or attempting to take orders for the sale of goods, wares and merchandise, or personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future. A person who engages in the act of solicitation shall be referred to as a "solicitor."

(c) "Canvassing" includes the act of any person, other than a peddler or a solicitor, whether a resident of the city or not, traveling by foot, vehicle, or any other type of conveyance, who goes from door to door, place to place, house to house, or street to street conducting a poll, survey, or petition drive, or sharing, communicating or otherwise conveying ideas, views or beliefs, or disseminating oral or written information to a person willing to directly receive such information, whether political, religious, commercial, non-commercial, charitable or otherwise. A person who engages in the act of canvassing shall be referred to as a "canvasser."

(d) "Handbilling" includes the act of any person who casts, deposits, places, scatters or throws any commercial or noncommercial handbill, pamphlet, circular, newspaper, paper, booklet, poster, leaflet, or other printed matter onto the property of a business or residence in the absence of a subscription agreement.

(e) "Person" shall mean any individual, group, firm, partnership, corporation, joint venture, company, club, association, religious organization, sect, denomination, society, league, and any other organization.

(f) "Police Department" shall mean the Lafayette Police Department.

Section 4-403 Permit--Required and Nontransferable.

It is unlawful for any person to peddle or solicit as described in Section 4-402(a) or 4-402(b) without having a permit from the City issued pursuant to this Chapter that is valid, unrevoked and in effect at all times. Such permit shall not be transferred to any person or used by any person other than the person named in and issued the permit.

Section 4-404 Permit--Display Requirements.

Every solicitor or peddler, at all times while engaged in soliciting or peddling shall wear, or have in his or her immediate possession, a driver's license or other valid photo identification card, showing such peddler or solicitor's name and permanent address, and the permit issued to him or her by the Police Department pursuant to this Chapter, and when so soliciting or peddling shall display the same upon demand of any police officer of the City

and upon demand of any person to whom he or she is soliciting or peddling. (Prior Code §§56-4.816.) No person issued a permit shall alter, remove, or obliterate any entry made upon such permit, or deface such permit in any way.

Section 4-405 Permit—Application and Issuance.

(a) An application for a peddlers and solicitors permit pursuant to this chapter shall be made to the Lafayette Police Department on a form provided by the Police Department, signed under penalty of perjury and accompanied by a fee as set by Resolution of the City Council which shall not exceed the actual cost of processing the application. Such application shall be filed with the Police Department. The Police Department shall verify the accuracy of the information set forth in the application and shall deny the permit if the application contains false information, if the applicant has ever been convicted of any felony or misdemeanor involving theft, violence, drugs or acts of a trespassing nature, or if the entity on whose behalf the applicant will be peddling or soliciting, where applicable, has previously been found to have engaged in fraudulent business practices. Otherwise, the permit shall be issued no more than five (5) business days following the Police Department's receipt of a completed application accompanied by the application fee.

(b) The application required in this chapter shall contain all of the following information:

(1) Name and birth date of the applicant;

(2) Permanent home address and local address of the applicant;

(3) The name and address of the person by whom the applicant is employed, if applicable;

(4) A brief description of the nature of the applicant's business and goods to be sold and the location and premises where the activity will be conducted;

(5) The length of time applicant has engaged in such business and the dates and places he has been engaged therein during the preceding five years;

(6) Statement as to whether or not the applicant holds a state license for such sales, and if so, copy of sales tax certificate issued by state and sales tax number;

(7) Statement setting forth the dates of permits granted to the applicant by the City for the preceding five years;

(8) Statement whether or not the applicant or any person financially interested in the business has ever been convicted of any felony~~,~~ or misdemeanor involving theft, violence, drugs or acts of a trespassing nature, or of a violation of a local agency ordinance, and if so, the nature of the offense, the date of such conviction and the sentence imposed, if any, and the court in which each conviction and sentence was entered.

(9) Statement whether or not the business on whose behalf applicant will be peddling or soliciting has ever been found to have engaged in fraudulent business practices.

(c) All such applications shall be accompanied by the fee established by the City Council. The application fee is not refundable.

(d) If while such application is pending, or during the term of any permit granted pursuant to this chapter, there is any change in fact that would alter the information given in the application, the applicant shall notify the Police Department in writing within 24 hours of such change. Such change in fact may constitute grounds for revocation.

(e) Such permit shall be valid for not more than 180 days following the date of issuance unless earlier revoked pursuant to this chapter.

(f) The permit shall bear the name and address of the person by whom the solicitation or sale is to be made, the number of the permit, the date of issuance and expiration, and the kind of goods or services to be peddled or solicited pursuant to such permit, together with a statement that the permit does not constitute an endorsement by the City or any of its departments, officers or employees of the purpose of the person conducting the solicitation or sale.

Section 4-406 Permit--Revocation.

(a) Any permit applied for or issued pursuant to this chapter may be denied or revoked at any time by the Police Department for any of the following reasons:

(1) Fraud, misrepresentation or false statement contained in the application for a permit;

(2) Fraud, misrepresentation or false statement contained in the course of carrying on the activity authorized by such permit;

(3) Violation of any provision of this chapter;

(4) Conducting the activity authorized by the permit in an unlawful manner, or in such a manner as to cause a breach of the peace or as to constitute a menace to the health, safety, or general welfare of the public;

(5) Conviction of any felony or any ~~,~~ misdemeanor involving theft, violence, drugs or of a trespassing nature, or finding of fact that if known would have prevented the initial issuance of the permit; or

(6) Failure to pay any judgment arising from or connected with the activities authorized by the permit.

(b) The Police Department shall give written notice of the suspension or revocation of the permit to the permittee either in person or by mail at the address listed on the permittee's application.

Section 4-407 Appeals--Procedure and Fee.

Any person aggrieved by any action of the City or Police Department pursuant to this chapter or who wishes to challenge the decision of the Police Department on any permit application including but not limited to the Police Department's decision to issue or deny a permit shall file a letter of appeal with the City Clerk within ten (10) days of the aggrieving action. The letter shall be addressed to the City Council, shall set forth the grounds for the appeal and shall be accompanied by permittee's appeal fee as established by resolution of the City Council. The City Council shall set the time and place for hearing such appeal, and written notice of such time and place shall by given to the applicant by the City Clerk either in person or by mail at the address listed in the permittee's application at least ten (10) days prior to the date set for the hearing at which hearing the applicant will present his case and any other interested person may present testimony for or against the applicant.

Section 4-408 Hearing and decision.

(a) At the time and place specified in the notice, or at such later time to which the hearing may be continued, the City Council shall hear the appeal.

(b) The applicant has the burden of presenting all necessary evidence from which findings required by this section may be made. The City Council may order a permit be issued to the applicant if it finds that all of the following conditions are satisfied:

(1) The application has been fully, accurately, and truthfully completed;

(2) The applicant has not been convicted of any felony or ~~of~~ any misdemeanor involving theft, violence, drugs or of a trespassing nature;

(3) The business for which the applicant proposes to peddle or solicit has never been found to have engaged in fraudulent business practices;

(4) Neither the applicant nor his operation is likely to be injurious to the public welfare; and

(5) All applicable laws and ordinances are complied with.

(c) If the City Council does not make all of these findings, it shall deny the appeal. The decision of the City Council is final.

(d) The City Council may impose reasonable conditions on the issuance of a permit which is granted upon appeal.

Section 4-409 Solicitation, Peddling or Canvassing where Sign Displayed is Prohibited.

(a) No peddler, solicitor, or canvasser shall ring the bell of, or knock on the door of, or attempt to gain admittance to any residential property, or contact or attempt to contact any occupant of any house or dwelling, where there is posted, affixed or otherwise displayed, in letters not less than one inch in height and clearly visible from the public right-of-way or normal entryway to such house or dwelling, a sign prohibiting such soliciting, peddling or canvassing.

(b) No peddler or solicitor shall attempt to peddle or solicit on any private commercial property, including those normally open to the general public, where there is posted at all entrances thereto, in letters not less than one inch in height, and clearly visible to persons entering, a sign or placard prohibiting such soliciting or peddling.

Section 4-410 Solicitation Time Limitation.

No person shall engage in any act of peddling, soliciting, or canvassing between the hours of 6 p.m. and 9 a.m. local time, except by appointment.

Section 4-411 Books and Records.

Every person who engages in soliciting or peddling shall maintain a system of accounting whereby all monies collected by such person are entered upon the books or records of such person.

Section 4-412 Exemptions.

(a) The provisions of Section 4-403 shall not apply to the act of carrying, conveying, delivering or transporting milk, dairy products, newspapers or other goods, to regular customers on established routes, solicitation at wholesale or business premises within the city, or to charitable or religious solicitations that are conducted solely by members of said charity or religion, at regular assemblies, meetings, services.

(b) The provisions of Section 4-403 shall not apply to persons age 15 and under. These persons shall remain subject to all other applicable regulations set forth in this chapter.

(c) Nothing in this chapter shall prohibit persons from distributing handbills door-to-door within the City without a permit, subject to the regulations set forth in this chapter. However, any act of handbilling shall comply with any regulation the City may from time to time adopt relating to the distribution of handbills.

(d) Nothing in this chapter shall prohibit persons from canvassing door-to-door within the City without a permit, subject to the regulations set forth in this chapter. Additionally, solicitation of donations made incidental to such canvassing is excluded from the permit requirements of this chapter.

Section 4-413 Violations and Penalties.

Engaging in or practicing any activity described in Section 4-402(a) or 4-402(b) without first having procured a permit to do so, or engaging in or practicing any activity described in Section 4-402(a), 4-402(b) or 4-402(c) without complying with any and all regulations of such activity contained in this chapter, constitutes a nuisance and a separate violation of this chapter for each and every act ~~day that such activity~~that is ~~so~~ engaged in or carried on in violation of this chapter. In addition, any person who violates the provisions of this chapter shall be deemed guilty of an infraction for the first violation and a misdemeanor for each subsequent violation thereafter, and shall be subject to penalty as set forth in Section 1-302 of this Code.

Section 4-414 Enforcement.

It shall be the duty of the Police Department to investigate any complaints of violations of this chapter and to enforce the provisions of this chapter.

Section 3. CEQA. The City Council finds that adoption of this Ordinance is not a "project," as defined in the California Environmental Quality Act because it does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and concerns general policy and procedure making.

Section 4. Notice of Exemption. The City Council directs staff to prepare and file a Notice of Exemption no more than five (5) working days after adoption of this Ordinance.

Section 5. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 7. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on January 12, 2009 and was adopted and ordered published at a meeting of the City Council held on January 26, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: APPROVED:

Joanne Robbins, City Clerk

Don Tatzin, Mayor

Danny Riggio
3313 Las Huertas Road
Lafayette, California 94549

RECEIVED
JAN 0 5 2009
CITY OF LAFAYETTE

Card sent

December 23, 2008

Joanne Robbins, City Clerk
Lafayette City Council
3675 Mt. Diablo Blvd. Rm. 310
Lafayette, California 94549

To Whom it may concern:

We understand that you are reviewing the Solicitors Procedure for our city to include more strict standards against peddling.

We support the new Solicitors Ordinance, either version one or two. We need this in our city

Sincerely,

Danny Riggio

Danny Riggio

BRANDT ANDERSSON
6 CORTE RINALDO
LAFAYETTE, CALIFORNIA 94549

January 9, 2009

Lafayette City Attorney
Lafayette Crime Prevention Commission
Lafayette City Council

I will not be able to attend the City Council meeting of January 12, 2009 until about 9:00 pm, and I expect the Solicitation Ordinance (Item 10A on the agenda) will be taken up before that. Therefore, I have provided my comments on that item below.

At an earlier city council meeting, I had expressed concern over the breadth of the proposed Solicitation Ordinance. The ordinance, as it had been revised, would deny permits to anyone convicted of a felony or misdemeanor. At my request, I was invited to meet with the Crime Prevention Commission at their next meeting to discuss my concerns.

On December 12, 2008, I met with the Commission, as well as Chief Hubbard and two of his officers. I explained that I supported the ordinance, but felt that permit denial could be more closely focused to address the actual concerns of the community. As written, the ordinance cast too wide a net, denying permits to those who had been convicted of crimes that were unrelated to the safety concerns underlying the proposed ordinance. I understood that the Commission had attempted to do just that, but their attempt to restrict it to crimes of "moral turpitude" ran into issues of ambiguity and lack of a clear definition.

Based on an earlier discussion with Chief Hubbard, I proposed that denial of the permit be based on the type of crimes committed. He had indicated that crimes involving theft or violence were the ones that we had to be concerned with. He had noted that even if the crime were pled down to a lesser crime, the nature of the crime would remain and the permit would be denied. Chief Hubbard suggested that we add drug crimes to the permit denial categories.

There followed a lively and constructive discussion of the issue, of the definitions of the crimes proposed, and of specific types of transgressions that might be included. The Commission added crimes involving acts of trespass to the list. The result is the revisions that are currently proposed. I fully support the recommendation of staff to introduce Ordinance 579 and encourage the Council to do the same.

I very much appreciate the extra effort and time taken by the Crime Prevention Commission and Chief Hubbard and his officers to address my concerns and to make this a better ordinance for the community. Please contact me if you have any questions, comments at 284-5678 (home), 935-1050 (office), or brandtand@aol.com.

Sincerely,

Brandt Andersson

for 10A